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THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

WRIT PETITION NO. 6753 OF 2005

DATED: 09-11-2005

Between

Sri Chaitanya Educational Committee, rep. by
President Sri Dr. B. Satyanarayana Rao,
S/o Nagabhushanam, Aged about 57 years,
Chaitanya Nagar, Tadigadapa, Poranki,
Krishna District.

..... PETITIONER

And

The Commissioner of Income Tax,
Central Circle, Hyderabad and another.

..... RESPONDENTS

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WRIT PETITION NO. 6753 OF 2005

(ON BEING MENTIONED)

ORDER: (per Sri B. Sudershan Reddy, J)

The writ petition is filed by the petitioner invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ of Mandamus declaring the action of the respondents in attaching the bank accounts and initiating recovery proceedings when the appeal is pending before the appellate Tribunal filed against the orders of the Commissioner of Income Tax, the 1st respondent herein in CIT (C)/Hyd/Chaitanya group dated 26-07-2004 as illegal, arbitrary, unconstitutional and without any power and authority of jurisdiction. The petitioner accordingly prayed for issuance of consequential blanket directions to the respondents "not to take any coercive steps and not to collect taxes till the finalization of the above appeal before the appellate Tribunal……".

On the strength of the application for registration under Section 12 A of the Income Tax Act, 1961 (for short 'the Act'), the Commissioner of Income Tax, Visakhapatnam vide proceedings dated 14-08-1992 registered the petitioner – Society as charitable trust. The fact remains that the Department conducted search and seizer operations on 02-07-2002 and initiated proceedings under Chapter XIV B of the Act. Thereafter, the 1st respondent issued show cause notice dated 15-10-2003 proposing to withdraw the registration under Section 12 A of the Act and requested the petitioner – Society to file its objections within ten days. On receipt of the said show cause notice, the petitioner claims to have submitted an explanation *inter alia* contending that the 1st respondent herein has no power either to withdraw or cancel the registration. The 1st respondent passed orders dated 26-07-2004 withdrawing the benefit under Sections 11 and 12 of the Act. The petitioner filed appeal before the Income Tax Appellate Tribunal on 24-09-2004 which is stated to be still pending under consideration of the appellate Tribunal.

The present writ petition has been filed on the ground that the 2nd respondent passed orders under Section 158 BC of the Act on 30-07-2004 withdrawing the benefits under Sections 11 and 12 of the Act basing on the orders of the 1st respondent dated
26-07-2004 and assessed the income of the Society and levied huge tax. The action of the 2nd respondent in making such an assessment and imposing tax, according to the petitioner, is illegal and unconstitutional.

Be it noted, the proceedings of the 2nd respondent in making assessment and imposing tax as against the petitioner is not the subject matter of the writ petition. Evidently, it is also not the subject matter of appeal before the appellate Tribunal.

Even that being the situation, this Court disposed of the writ petition filed by the petitioner in the following manner:

"The only grievance made in this Writ Petition is that the petitioner filed an appeal before the Income Tax Appellate Tribunal against the order passed by the 1st respondent – Commissioner of Income Tax, Hyderabad, dated 26-07-2004, and the same is pending. In the meanwhile, he is resorted to coercive steps, and therefore, he seeks appropriate direction.

2. After hearing the learned counsel for the petitioner and learned standing counsel, we find it appropriate to direct the Income Tax Appellate Tribunal to dispose of the appeal filed by the petitioner within three weeks from the date of receipt of a copy of this order. Till such time, the respondents shall not resort to any coercive steps".

It is evident from the order itself that such an order resulting in far reaching consequences has been passed without hearing the other side. No rule nisi has been issued nor even notice before admission has been ordered. We fail to appreciate as to how the petitioner could have obtained such a blanket order restraining the respondents from taking any coercive steps for realization of the tax due and payable by it pursuant to the order of assessment made by the 2nd respondent which is not the subject matter of writ petition nor the subject matter of appeal before the appellate Tribunal. In the absence of challenge to the orders passed by the 2nd respondent, this Court could not have passed orders restraining the respondents from taking any coercive steps.

For the aforesaid reasons, we find it difficult to sustain the order which was obviously passed under a mistaken impression, perhaps based on the statement made across the Bar during the course of hearing of the writ petition. The mistake is required to be corrected by this Court.

In the affidavit filed by the Department, it is now explained that the petitioner is in arrears of tax of more than Rs. 55 Crores apart from the accrued interest. Obviously, this Court never intended to interdict any of the proceedings of the 2nd respondent.

For the aforesaid reasons, we consider it appropriate to modify the order dated 30-03-2005 made in the writ petition. We fail to appreciate as to how the Tribunal could not deliver its judgment even though the arguments were heard and completed as early as on 05-05-2005 as stated in the affidavit filed in support of the application. Therefore, the Income Tax Appellate Tribunal, Hyderabad Bench 'B' is directed to pronounce its verdict in I.T.A No. 887/Hyd/2004 on or before 07-12-2005 without fail.

The petitioner is not entitled for grant of any further relief. The petitioner shall not have the benefit of that portion of the order passed in the writ petition directing the respondents not to take coercive steps against it. The order is accordingly modified.

The Writ Petition is accordingly disposed of.

(B. Sudershan Reddy, J)

09..11..2005

(S. Ananda Reddy, J)

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Note: Registry is directed to communicate this Order to the Income Tax Appellate Tribunal, Hyderabad Bench 'B', apart from the other respondents by tomorrow.

B/O

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